IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6672 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IBRAHIMBAI Y KADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6672 of 1991

Mr.K.B.Naik for MR BB NAIK for Petitioner No. 1

Mr. Pradip D. Bhate, AGP for Respondent No. 1

RULE SERVED for Respondent No. 1,2-3-4

MR VD PARGHI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.1 The petitioner by way of this petition has challenged the inaction on the part of the respondent no.2 in not appointing him to the post of Attendant (Class IV) in the Office of the Deputy Director, Animal Husbandry Polyclinic and instead appointing the respondent no.4 to the said post vide order dated 10-9-1991 and further seeks a direction to appoint the petitioner to the post in question.

2.1 The brief facts leading to the present case are that the petitioner belongs to a socially and economically backward community known as " Patani Jamat" which is recognized by the State Government. The date of birth of the petitioner is 1-6-1961 and the petitioner has passed the XIIth Standard Examination through Madressa High School Himatnagar. The petitioner has produced the said ESBC certificate dated 12-9-1988 issued by the Social Welfare Officer, Himatnagar, at Annexure B to the petition. The petitioner has got his name registered with the Employment Exchange vide registration no.3543/78 on 4th July, 1978.

3.1 According to the petitioner, the Deputy Director, Animal Husbandry Veterinary Polyclinic had placed indent dated 30-4-1991 with the Employment Exchange, Himatnagar for supplying names and particulars of suitable candidates. The petitioner's name was forwarded by the Employment Exchange with intimation to him by letter dated 23-5-1991 and he was called for interview on 28-8-1991 by the respondent no.2 to the post of Attendant ,a Class IV post,vide letter dated 13th August, 1991(produced at Annexure" D" to the petition) as one such post was lying vacant and the respondent no.2 wanted to appoint eligible candidates in the Office of the Deputy Director, Animal Husbandry Veterinary Polyclinic. It is contended by the petitioner that he appeared at the interview and secured 68 marks, while the respondent no.4 secured 62 marks. However, though the petitioner was satisfying the requisite qualifications, the respondent no.2 did not consider the petitioner eligible for appointment on the ground that he was over age on the date of interview and the respondent no.2 had appointed the respondent no.4 on 10th September, 1991 to the post of Attendant.

4.1 Mr. Naik, learned Counsel for the petitioner has vehemently contended that the action of the respondent no.2 in appointing the respondent no.4 is uncalled for as the criteria regarding age limit is to be considered as on the date of advertisement and not on the date of appointment/interivew. According to him, the petitioner

has been wrongly deprived of his right of appointment to the post of Attendant. In order to make goods his say, Mr. Naik has relied on the observations made by the Honourable the Apex Court in the case of DR.M.V.NAIR v.UNION OF INDIA & ORS. reported in (1993) 2 SCC 429 wherein at para 9, it has been held as under:

"It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the application, unless, of course, the notification calling for applications itself specifies such a date."

4.2 Mr. Naik has next relied on the observations made by the Honourable the Apex Court in the case of REKHA CHATURVEDI (SMT) V. UNIVERSITY OF RAJASTHAN AND ORS. reported in 1993 Supp (3) SCC 168, paragraph 9 whereof reads as under:

"It will thus be obvious from the requirement of the aforesaid qualifications, that on the last date for submitting the applications a candidate applying for the said posts should have had (a) Doctorate degree (in the relevant subject), or research work of an equally high standard (in the relevant subject) and (b) good academic record with at least a second class Master's degree (in the relevant subject). However, if the Selection Committee was of the view that the research work of a candidate as evident either from his thesis or from his published work was of a very high standard, the Scrutiny Committee could relax the qualification that the candidate should have had at least a Doctorate degree or research work of an equally high standard and good academic record with at least a second class Master's. Secondly if the candidate possessing a Doctorate degree of equivalent research work was not available or even if available, was not suitable, the candidate possessing a good academic record (preferably M.Phil or equivalent degree or research work of quality) could also be appointed provided he had done research work for at least two years or had practical experience in a research laboratory/organisation. However, this relaxation could be given on the condition that the candidate would obtain a Doctorate degree or give evidence of research of high standard within eight years of his appointment. If he did not satisfy the second requirement, all that he could be visited with was a handicap that he would not be able to earn future increments until he fulfilled the said requirements. It is, therefore, obvious that Doctorate degree was not a must and the lack of Doctorate Degree could be made up by either of the qualifications laid

down above. None of the candidates except respondent 10 who had applied and appeared for interview(including the petitioner) possessed the Doctorate degree by the last date of submitting the applications for the post."

4.3 Mr. Naik has also relied on the observations made by the Honourable the Apex Court in the case of (DR,)KAMAL SINGH BENGALI v. GUJARAT PUBLIC SERVICE COMMISSION reported in 1991 (2) G.L.H. (U.J.) 3, wherein it has been held that: " The eligibility of all those persons to be considered in response to the same advertisement has to be with reference to a fixed date and the last date of applications is the rational and reasonable date with reference to which the prescribed age limit can be ascertained."

4.5 Mr. Naik then relied on the observations made by the Honourable the Apex Court in the case of A.P.PUBLIC SERVICE COMMISSION, HYDERABAD AND ANR. v. B.SARAT CHANDRA AND ORS, reported in 1990(4) SLR 235, wherein at paragraph 7, it has been held that:

" The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva-voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon and fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the Rule making authority."

4.6 Reliance is also placed by Mr. Naik on the

observations made by the Honourable the Apex Court in the case of PURUSHOTTAM V. CHAIRMAN, M.S.E.B. AND ANOTHER, reported in (1999) 6 SCC 49 wherein at paragraph 7, it has been held that:

" In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature."

5.1 On the other hand, learned A.G.P Mr. Bhate for the respondents has submitted that in view of the affidavit-in-reply filed by the respondents, it is clear that the petitioner was found over age. and on the date of appointment he was not entitled to get appointment in view of the Government letter dated 19th February, 1964. Mr.Bhate has also relied on the second affidavit-in-reply wherein at paras 2 and 3 it has been mentioned that, " The date of birth of the present petition is 1-6-1961 on the date of interview, hence on that date, his age was 30 years 2 months and 28 days while the date of birth of the respondent no.4 on the date of interview was 18-7-1992

and his age was 19 years 1 month and 10 days. At the relevant time, Recruitment Rules were not in existence. The respondent no.4 who was falling within the age limit on the date of interview was appointed as per merit as he was fulfilling all other requisite qualifications for the said post. The appointment was made on the basis of the provisions contained in the proposed Recruitment Rules. The petitioner's case was not considered for appointment as even after giving five years relaxation to the petitioner, he being a candidate belonging to SEBC, he was not eligible for the apppointment. As per the information received from the Rajkot region under the Director of Animal Husbandry the same provision is followed and no candidate, who is above age as on the date of the interview as prescribed in the proposed Recruitment Rules is appointed."

6.1 I have heard the learned Counsel for both the parties.

7.1 Here, in the instant case,it is not in dispute that the Director, Animal Husbandry Veterinary Polyclinic (respondent no.3 herein) had placed indents with the Employment Exchange Himatnagar on 30-4-1991, the petitioner's name was forwarded alongwith other candidates, and the petitioner also came to be intimated about the same on 23-5-1991 and the petitioner appeared for the interview on the date fixed for interview on 28-8-1991. The fact that the petitioner possesses the requisite qualifications to the post in question is also not in dispute.

8.1 Considering the ratio of the various pronouncements of the Honourable the Supreme Court cited before me by the learned Counsel for the petitioner and looking to the admitted facts as discussed hereinabove, I am of the view that the contention raised by the learned Counsel for the respondent is misconceived. The eligibility criteria for appointment is to be looked into on the basis of the date of advertisement or the date on which the name was called for from the Employment Exchange as the case may be. If the contention which has been raised by the respondents is accepted then eligible candidates will be illegally kept out of employment on account of untenable decision on the part of respondents which is not the intent of the legislature. In find that on account of the erroneous decision of the respondents the petitioner was deprived of his right to be appointed to the post in question, and as such, the petitioner is entitled to be appointed as Attendant (Class IV).

9.1 For the foregoing reasons, the petition is partly allowed. The impugned order dated 10-9-1991 passed by the respondent no.2 is hereby quashed and set aside and the respondents nos. 1 to 3 are directed to appoint the petitioner on the post of attendant from the date the respondent no.4 is appointed giving him all benefits of service, but not back wages within a period of one month from the date of receipt of this order. Rule is made absolute to the aforesaid extent.

(K.S.Jhaveri,J.)

stanley-ksj.